IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.6393 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.Suresh Kumar with Mr. D.A. Dubey and S.S. Sarkar, for the Petitioners
Mr. A.S. Rao, for Respondents.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 21st February,2005
P.C.

. Rule. Heard forthwith.

2. The real grievance of the respondent seems to have been that his name was included in the panel pursuant to passing of the Limited Departmental Competitive Examination as contemplated by the Rules framed under Article 309. It is his case that 75% of the vacancies had to be filled in by promotion in the normal course and 25% of the vacancy had to be filled in on the basis of the Competitive Examination. The examination was conducted in the year 1991. The respondent came to be promoted as UDC for the first time on regular basis in the year 1995. Earlier he was working on ad hoc basis before regular promotion.

3. The Respondent filed Original

Application No.705 of 2002 wherein he had prayed amongst other that inter se seniority of candidates who passed Limited Departmental Examination is to be reckoned as per their merit/marks secured in the examination and not on the basis of their original seniority list of L.D.C.; to direct the Respondents to refix the seniority of Applicants in U.D.C. grade on the basis of marks/merit, as prayed in prayer (a) which is earlier referred to and to direct the respondents to hold a Review D.P.C. to consider their case of Applicants for their promotion to UDC post from the date their juniors are promoted. It appears that before the Tribunal on behalf of the petitioners herein a statement was made that in terms of Circular dated 12th December, 2002 issued by the Deputy Registrar of Trade Marks the date of appointment of the Respondent herein has been refixed to 1st July, 1991 from the earlier date of 21st February, 1995 in case of some other applicants on other dates.

. Considering that the Tribunal directed a review D.P.C. be held for their promotion based on the revised seniority in

the cadre along with all other consequential benefits. This is the order which is the subject matter of the present petition.

4. After hearing the learned Counsel we find that the impugned order will have to be set aside and the matter remanded back for further consideration in the light of what we have stated hereunder:-

(i) Admittedly the respondent had passed Departmental Examination from the 25% of seats to be filled by promotion by competitive examination. If that be and the respondent had to be promoted against such a vacancy had to be given the date of promotion in the year 1991 based on the examination conducted or on a vacancy arising during the validity of the list.

(ii) In the event the respondent could be so appointed then his seniority will have to be fixed, bearing in mind that promotion was 75% by regular method and 25% was by competitive examination.

(iii) The learned Tribunal to consider this aspect of the matter as clearly the

letter dated 12th December, 2002 was really not the final seniority list, but a tentative seniority list.

(iv) If the respondent's seniority is to be refixed based on the deemed promotion on his passing Departmental Examination, then review D.P.C. be held for considering the reliefs which he has prayed for if his date of promotion is refixed and also seniority.

(v) The Tribunal to consider these aspects and issue directions accordingly within three months.

(vi) Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)